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Attorneys for Defendants

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

WESTERN NATIONAL INSURANCE GROUP,

Plaintiff,

vs.

CARRIE M. HANLON, ESQ., and MORRIS, SULLIVAN, LEMKUL & PITEGOFF, and DOES 1 through 10 and ROE CORPORATIONS I-X,

Defendants.

CASE NO.

COMPLAINT

COMES NOW Plaintiff, WESTERN NATIONAL INSURANCE GROUP, by and through its attorney, PETER M. ANGULO, ESQ., of the law firm of OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI and hereby files this Complaint and alleges as follows:

JURISDICTION AND PARTIES

1. WESTERN NATIONAL INSURANCE GROUP is a Minnesota-based insurance corporation. Plaintiff has a subsidiary known as Western National Mutual Insurance Company which is licensed during all relevant times by the Nevada Division of Insurance to offer casualty, marine transportation, property, surety, and workers compensation insurance in the State of Nevada.

2. Carrie M. Hanlon, Esq., is an attorney believed, at all relevant times, to have been a resident of Clark County, Nevada and is licensed to practice law in the State of Nevada.

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3. The law firm of Morris, Sullivan, Lemkul & Pitegoff and/or its predecessor firm, organized under the law of the State of Nevada and the employer of Carrie M. Hanlon, Esq. during all times relevant to the instant Complaint. Its business office is located in Clark County, Nevada.

4. DOES 1 through 10 are individuals–whose identities are not presently fully known and/or understood–who had direct involvement in making decisions and taking (or failing to take) the actions which gave rise to liability in the instant Complaint. Specifically, said individual(s) were involved in the decisions regarding the handling of the subject litigation, communication with their client, scheduling of matters to be resolved, responsible for the intake of discovery requests and ensuring timely responses to same, and other legal and tactical decisions which were undertaken so as to give rise to the instant legal malpractice claim.

5. ROE CORPORATIONS I-X are parent and/or former corporations–whose name has not been identified–who are either the parent company for or the successor company to a defendant during all times relevant to this Complaint.

6. The damages incurred as a result of the allegations contained in this Complaint are estimated to exceed $1 million.

7. Pursuant to 28 U.S.C. §1332, this Court is empowered with jurisdiction to hear this matter.

FACTUAL ALLEGATIONS

8. On or about January 2, 2013 at approximately 6 a.m., Tammy Herbster allegedly slipped and fell on an ice-like substance located on the sidewalk of Desert Linn Spanish Gardens located at 348 Sunward Drive, Henderson, Nevada 89014.

9. During that time, Desert Linn Spanish Gardens had a landscape maintenance agreement with Classic Landscapes, LLC, 3660 W. Quail Avenue, Las Vegas, Nevada 89118.

10. At the time of the alleged slip and fall, Classic Landscapes was insured by Western National Mutual Insurance Company.

11. As a result of the slip and fall, Tammy Herbster filed a complaint against Desert Linn Spanish Gardens Owners Association. Desert Linn then filed a third-party complaint

against Classic Landscapes–notice of which was received by Plaintiff on or about June 3, 2014.

12. At that point in time, Western National contacted Defendants regarding representing Classic Landscapes in that matter.

13. Defendants accepted responsibility for the litigation and the request to represent Classic Landscapes extended from Western National.

14. On June 12, 2014, Defendants sent a letter to Classic Landscapes, LLC assuring they would "vigorously defend the litigation."

15. On or about August 15, 2014, Defendant Hanlon indicated to Plaintiff she attended an Early Case Conference for the litigation and gave an estimate of Ms. Herbster's medical bills to be approximately $12,000.

16. Although the alleged slip and fall occurred at approximately 6:00 a.m., by August 6, 2014, Defendants were aware, from Classic Landscapes that the scheduled time for the sprinklers to activate on that property was once a week between the hours of 7:00 a.m. to 11:00 a.m. on the same day of the alleged slip and fall. Further, Defendants had information that the sprinklers had been turned off altogether from the Wednesday before Christmas until the Wednesday after New Year's Day. Absent some malfunction or intentional tampering of the watering timers, the sprinklers had not been turned on as Classic Landscapes had not yet returned to the property.

17. On November 4, 2014, a $1 million Offer of Judgment was issued by Ms. Herbster's attorney against Classic Landscapes. That same day, Defendant Hanlon told Ms. Herbster's counsel to not "hold your breath on the $1 million."

18. On December 31, 2014, Ms. Herbster's counsel filed an Amended Complaint in the Eighth Judicial District Court, Clark County, Nevada, identifying Classic Landscapes, LLC, Firstservice Residential Nevada, LLC and Desert Linn Owners Association as primary, direct Defendants.

19. On or about March 19, 2015, Defendants sought to obtain an expert in meteorology regarding weather on the day of the alleged slip and fall. That same day, Defendant Hanlon sent an e-mail to Plaintiff indicating she was not conducting discovery because the new

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complaint had not been served.

20. Service of Ms. Herbster's new complaint was affected on March 11, 2015 and an answer was filed on behalf of Classic Landscapes on March 13, 2015.

21. On July 27, 2015 Ms. Herbster's counsel served a letter upon the parties indicating the NRCP 16.1 conference had been scheduled for August 4, 2015 at 2:00 p.m. and inquiring whether the parties were interested in mediation.

22. The inquiry regarding mediation was never transmitted to Plaintiff by Defendants.

23. To this point, no analysis of potential exposure was ever transmitted to Plaintiff by Defendants. There was also no update on the medical specials at issue.

24. On November 10, 2015, Tammy Herbster's counsel served an Offer of Judgment for $1 million on Classic Landscapes.

25. On November 11, 2015 Plaintiff received an e-mail from Defendant Hanlon regarding the Offer of Judgment. Defendants did not recommend it be accepted nor did they provide any analysis into the issues to allow Plaintiff to make an informed decision.

26. On or about November 20, 2015, Ms. Herbster's counsel served upon Classic Landscapes written discovery including Interrogatories, Request to Produce and Request for Admissions by serving a copy of same directly to Defendants.

27. On December 8, 2015, Defendants recorded a time entry indicating they had communicated with Classic Landscapes regarding information necessary to complete the answers to Interrogatories.

28. On December 17, 2015, Defendants provided a revised medical chronology, along with the medical specials, to Plaintiff indicating, for the first time, the total medical specials were approximately $510,744.32.

29. On December 17, 2015 Defendant Hanlon indicated she was attempting to contact Robert Garcia–a witness in the case. No evidence of any such contact or information from the contact was given to Plaintiff by Defendants. At the same time, Defendants were directed by Plaintiff to proceed forward with noticing Ms. Herbster's deposition and to go to the property and assess the changes in the color of the sidewalk when the incident occurred.

30. Responses to the Request for Admissions served by Herbster on November 20, 2015, were due on or before December 20, 2015. However, Defendants did not answer those Request for Admissions on a timely basis.

31. On January 4, 2016, Defendants listed a time entry billing Plaintiff for communicating with client Jay Strauss regarding the status of responses to written discovery.

32. On January 5, 2016, Tammy Herbster's attorney filed a Motion for Summary Judgment predicated on the Request for Admissions which had never been answered and were judicially deemed to have been admitted by operation of NRCP 36.

33. On or about January 6, 2016, Defendants finally prepared responses to the Request for Admissions and served late-responses to those requests. In those late-filed responses, Defendants denied key requests which, if admitted, could lead to a finding of liability.

34. On or about January 6, 2016, Ms. Herbster's counsel acknowledged to Defendants Classic Landscapes had points to make regarding damages and requested the case be mediated. At no time did Defendants ever communicate to Plaintiff they had missed the deadline to answer written discovery nor did they indicate what steps they would take to rectify the situation.

35. Likewise, Defendants did not seek an extension of time to answer the discovery requests and never sought judicial relief from the failure to timely answer discovery.

36. By January 6, 2016, Defendants had never drafted any liability analysis to Plaintiff to assist it in understanding the potential for exposure in the matter.

37. By January 6, 2016, Defendants had never provided any damages analysis to assist in determining whether or not a resolution should take place nor had they retained (or sought the retention of) any medical expert(s) to challenge the sufficiency of the medical damages or Ms. Herbster's claims of a need for future medical intervention.

38. By January 6, 2016, Defendants had never communicated to Plaintiff any request by Ms. Herbster's counsel to engage in mediation.

39. Defendants never finished and/or served answers to Ms. Herbster's Request for Production of Documents.

40. On January 7, 2016, Defendant Hanlon communicated with Classic Landscapes

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regarding an "urgency in getting responses to written discovery which is due very soon."

41. On January 8, 2016, Tammy Herbster's counsel communicated to Defendants via written correspondence advising Ms. Herbster's counsel were planning on going forward with the Motion for Summary Judgment predicated on the Request for Admissions since Defendants client (Classic Landscapes) would not directly admit all of the fact requests contained in the Request for Admissions.

42. This communication was never transmitted to Plaintiff by Defendants.

43. On January 13, 2016, the Motion for Summary Judgment was withdrawn without prejudice.

44. On January 15, 2016, Ms. Herbster's counsel served a time limit demand upon Classic Landscapes through Defendants for $950,000 which was good until February 5, 2016.

45. On January 15, 2016, Plaintiff was notified of the time limit demand by Defendants. However, Defendants urged Plaintiff to wait until Herbster had been deposed (scheduled for January 22, 2016) at which point Defendants would be in a better position to advise Plaintiff of the merits of the demand.

46. Tammy Herbster's deposition was taken on January 22, 2016. In that deposition, Plaintiff claimed she slipped and fell sometime between 6:00 a.m. to 7:00 a.m. She further claimed the sprinklers came on at approximately 5:00 a.m. Plaintiff claimed the grass was wet when she rolled onto it after her fall and from that she inferred the sprinklers had already run that day.

47. Even though the deposition went forward, no summary of Plaintiff's deposition or further analysis of the case was ever provided to Plaintiff by Defendants. Furthermore, Defendants never undertook any discovery to refute Plaintiff's testimony.

48. On February 29, 2016, Defendant Hanlon's employment relationship with Defendant Morris, Sullivan, Lemkul & Pitegoff terminated. While the file stayed with the law firm, Defendant Hanlon indicated she would take the case with her once she found a new firm with which to practice.

49. On March 23, 2016, Defendant Hanlon was contacted by Plaintiff asking for an

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update, however, Plaintiff informed Defendant she was no longer with the firm and had no update to provide on the case.

50. On March 24, 2016, Defendant Morris, Sullivan, Lemkul & Pitegoff moved to withdraw from the case.

51. On April 5, 2016, Defendant Hanlon indicated to Plaintiff via e-mail she was to begin work on April 4, 2016 and would keep all files from Plaintiff.

52. On April 5, 2016, an Order granting the motion to withdraw Defendant Morris, Sullivan, Lekmul & Pitegoff as counsel was granted. Defendant Hanlon was required, in that Order, to "properly appear as counsel of record for Classic Landscapes, LLC."

53. On April 8, 2016, Defendant Hanlon served untimely answers to the November 20, 2015 Interrogatories from Herbster–even though she had not appeared as counsel of record as required by the Court.

54. On or about April 11, 2016, a motion for summary judgment was re-filed by Herbster's counsel again based on the deemed request for admissions.

55. On that same date, Defendant Hanlon informed Plaintiff she could not take the case and the file was transferred to another law firm in Las Vegas.

56. On or about May 17, 2016, the motion for summary judgment was granted. In the Court's Order, Defendants were deemed to have notice of the Request for Admissions on November 20, 2015 since they were served by way of the Eighth Judicial District Court's "Wiznet" e-service program. The court further noted Defendants never requested an extension of time in which to respond to the served Request for Admissions and never sought leave of the court to file an untimely response. The decision further noted Defendants never sought to withdraw or amend the deemed admissions under NRCP 36(b) prior to receiving the motion for summary judgment or the re-filing of the April 11, 2016 motion for summary judgment. Indeed, the first time the deemed admissions were sought to be withdrawn was in the Opposition filed on May 4, 2016.

57. Thereafter, a Motion for Reconsideration of the Motion for Summary Judgment. The Defendants obtained permission to intervene in the matter and filed their own joinder to the

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Motion for Reconsideration.

58. On May 24, 2016, Tammy Herbster's counsel provided a time limit demand upon Plaintiff and Classic Landscapes, LLC. In that communication, counsel claimed he had extended multiple offers to settle the case within policy limits while the case was being handled by Defendants but none of these offers had been accepted or even received any response from Defendants.

59. Despite the fact valid defenses existed for liability and damages in this matter, the actions of Defendants foreclosed the opportunity of Plaintiff and Classic Landscapes to mount a proper defense of either damages or liability. Accordingly, Plaintiff was required to settle the case for $1.5 million to avoid excess exposure to its insured–Classic Landscapes. The need for this settlement was solely occasioned by the acts of malpractice performed by Defendants.

FIRST CAUSE OF ACTION

(Breach of Fiduciary Duty)

60. Plaintiff incorporates the allegations in paragraph 1-59 as if fully stated herein.

61. Defendants owed a fiduciary duty to the Plaintiff as a result of their entrustment to properly handle the underlying tort litigation for which they were retained.

62. Defendants knew, in that relationship, that Plaintiff was trusting Defendants to handle the underlying litigation professionally and appropriately, and to provide Plaintiff with meaningful information to assist in the evaluation and potential resolution of that litigation. Plaintiff further expected Defendants to "aggressively defend" the case as they had promised they would.

63. Despite this knowledge, Defendants breached their fiduciary duty and failed to fulfill their obligations including, but not limited to, the failure to tell Plaintiff of such breach. Accordingly, their actions constitute a breach of their fiduciary duty and Plaintiff is entitled to damages arising therefrom.

SECOND CAUSE OF ACTION

(Breach of Contract)

64. Plaintiff incorporates the allegations in paragraph 1-63 as if fully stated herein.

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65. There was, at the time, an express or implied contract between Defendants and Plaintiff regarding the handling of the underlying tort litigation involving Herbster on behalf of Plaintiff and Classic Landscapes. This contractual relationship was entered into voluntarily by Defendants. Defendants billed Plaintiff for the time they were allegedly investing in the litigation–said time being understood to be directed towards the proper handling of the underlying tort litigation.

66. Plaintiff paid the bills as submitted and provided support and communication to Defendants sufficient to allow them to perform their duties appropriately. Nevertheless, Defendants chose to act in violation of their contractual duties and obligations to handle the underlying tort litigation properly.

67. This breach of the contractual obligations Defendants undertook in the representation has resulted in damages to Plaintiff.

THIRD CAUSE OF ACTION

(Legal Malpractice)

68. Plaintiff incorporates the allegations in paragraph 1-67 as if fully stated herein.

69. Under Nevada law, an attorney-client relationship existed between Defendants and Plaintiff regarding the underlying tort litigation involving Tammy Herbster.

70. The relationship was specifically directed to the proper defense of that underlying litigation and Plaintiff authorized Defendants to act on behalf of themselves and Classic Landscapes to ensure the matter was handled in accord with Defendants' learning, experience, and expertise.

71. Defendants accepted that responsibility and billed Plaintiff for the time they spent in performing their duties thereunder.

72. Despite the voluntary undertaking of duties under this relationship, the actions of Defendants identified herein were a direct breach of that attorney-client relationship and the responsibilities thereunder.

73. Said Breach was the direct and/or primary motivating factor in the damages which Plaintiff has suffered as a result–including the award of monies paid to settle the Herbster

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litigation.

74. Defendants' breach not only included (but is not limited to) the failure to provide a proper analysis of the case, to keep the client informed of offers to mediate or settle the case, and to perform their obligations (such as responding to discovery in a correct and appropriate manner) but also the failure to communicate to Plaintiff the fact that a breach of responsibilities had occurred and the consequences which were resultant of same.

75. This breach by Defendants resulted in the incursion of damages by Plaintiff in an amount in excess of $1 million. Further, Plaintiff was required to incur additional attorneys fees, legal costs, and other damages as a consequence of these actions.

WHEREFORE, Plaintiff WESTERN NATIONAL INSURANCE COMPANY respectfully requests that this Honorable Court enter judgment against Defendants as follows:

1. For compensatory damages in excess of $1,000,000.00;
2. For punitive damages;
3. Reasonable attorney's fees and costs and such other and further relief as the Court may deem appropriate under the circumstances.

DATED this 14 day of March 2017.

OLSON, CANNON, GORMLEY
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By ______________________
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